UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Roger M. Haselton, Plaintiff,	:	
v.	:	File No. 1:03-CV-223
Jeffrey L. Amestoy, Marilyn S. Skoglund, and Frederic W. Allen, Defendants.	:	

OPINION AND ORDER
(Papers 2, 3, 4 and 12)

Plaintiff Roger Haselton, proceeding *pro se*, brings this action claiming that the defendants, each of whom are or have been justices of the Vermont Supreme Court, have violated his constitutional right to travel by refusing to overturn his conviction of driving with a suspended license. Since filing his complaint, Haselton has filed several motions, including a motion for court-appointed counsel (Paper 2), a motion for arrest of judgment (Paper 3), a motion to "protect plaintiff's free exercise of movement" (Paper 4), a motion to amend to add numerous defendants (Paper 5) and, most recently, a motion for immediate protection from state police powers (Paper 12). For the reasons set forth below, Haselton's arguments in support of his motions lack legal merit and, accordingly, the motions are DENIED.

Background

Haselton's principal claim is that he has a fundamental constitutional right to use public highways for travel and transportation, and that his conviction for driving with a suspended license violates that right. (Paper 1). Haselton has attached to his complaint the July 18, 2003 decision of the Vermont Supreme Court affirming his conviction. (Paper 1, Attachment). In its decision, the court noted Haselton's assertion of his right to travel. The court concluded, however, that Haselton's appeal was "completely unfounded," citing the rule that the constitutional right to travel is subject to the state's power to "'adopt reasonable measures for the promotion of safety upon our public highways in the interests of motorists and motorcyclists and others who may use them.'" Id. (quoting State v. Solomon, 128 Vt. 197, 199 (1969)).

Haselton has provided few other background facts concerning his case. In one of his filings he does state that, on August 19, 2003, he was "restrained because a tail light flickered on a farm truck plaintiff

was traveling," was pulled over by the police, was cited for driving with a suspended license, and was forced to walk away from his vehicle. (Paper 5 at 5). Haselton also claims that on October 10, 2003, police in Morrisville, Vermont threatened to arrest him, presumably for driving without a valid license. (Paper 12 at 1). Haselton again asserts that such an arrest would violate his right to travel, and specifically his right to migrate to his "farm home in New York." (Paper 12 at 1). Haselton also alleges that he needs to leave Vermont in order to transport another person to Minnesota for medical care. Id. at 2.

Discussion

I. Requests for Injunction Relief

Haselton has moved the Court for injunctive relief and for the appointment of counsel. His injunctive relief requests include a motion for immediate protection from state enforcement of its licensing law (Paper 12), a motion to allow him "free exercise of movement" (Paper 4), and a motion to arrest the Vermont Supreme Court's judgment, purportedly brought pursuant to Rule 34 of either the state or federal rules of

criminal procedure.[1] In a request for preliminary injunctive relief, the movant must show (1) irreparable injury and (2) either "a likelihood of success on the merits or sufficiently serious questions on the merits and a balance of hardships tipping 'decidedly' in the plaintiff's favor." Fair Housing in Huntington Comm., Inc. v. Town of Huntington, 316 F.3d 357, 365 (2d Cir. 2003) (quoting Rosen v. Siegel, 106 F.3d 28, 32 (2d Cir. 1997)). Here, Haselton has failed to show either a likelihood of success or serious questions on the merits of his case. Accordingly, his motions are denied.

One fundamental problem with Haselton's case is that he is suing justices of the Vermont Supreme Court for a decision they rendered while acting in their judicial capacities. In 1872, the Supreme Court stated that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, should be free to act upon his own convictions,

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[1] The Court is unaware of any authority authorizing it to arrest a state court judgment by means of Rule 34. In any event, Haselton's motion pursuant to Rule 34 was filed more than seven days after his conviction became final and is therefore barred as untimely.

without apprehension of personal consequences to himself." Stump v. Sparkman, 435 U.S. 349, 355 (1978) (citing Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351 (1872)). Today, it is axiomatic that the "cloak of [judicial] immunity is not pierced by allegations of bad faith or malice, even though unfairness and injustice to a litigant may result on occasion." Tucker v. Outwater, 118 F.3d 930, 932 (2d Cir.), cert. denied, 522 U.S. 997, 118 S. Ct. 562 (1997) (citations and internal quotations omitted). The Tucker Court identified a two-part test for determining whether a judge is entitled to absolute immunity. "First, [a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' 'Second, a judge is immune only for actions performed in his judicial capacity.'" Tucker, 118 F.3d at 933 (quoting Stump at 356-57, 360-63).

Haselton has sued Justices Amestoy, Skoglund and Allen for their decision affirming his conviction in his criminal case. Haselton has made no allegation that the

justices were acting outside of their judicial capacities or without jurisdiction. Moreover, because Haselton is bringing constitutional claims, his complaint against state officials is necessarily brought pursuant to 42 U.S.C. § 1983. See Baker v. McCollan, 433 U.S. 137, 140 (1979). In 1996, Congress amended § 1983 to bar injunctive relief "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity ... unless a declaratory decree was violated or declaratory relief was unavailable." Haselton has not alleged either that a declaratory decree was violated or that declaratory relief was unavailable. Accordingly, the Court will not impose an injunction against the defendants in this action.

A second flaw in Haselton's action is the fact that his constitutional claim is misplaced. The Supreme Court has recognized a constitutional right to travel. See Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903 (1986). However, the constitutional right to travel guarantees citizens of one state the right to enter and leave other states or to be treated as welcome

visitors in other states, Chavez v. Ill. State Police, 251 F.3d 612, 648 (7th Cir. 2001), not the right to drive a car without a license, Miller v. Reed, 176 F.3d 1202, 1205-06 (9th Cir. 1999). As the Ninth Circuit has noted, the Supreme Court, in Dixon v. Love, 431 U.S. 105, 112-16 (1977), held that "a state could summarily suspend or revoke the license of a motorist who had been repeatedly convicted of traffic offenses with due process . . . . The Court conspicuously did not afford the possession of a driver's license the weight of a fundamental right." Miller, 176 F.3d at 1206. Indeed, the right of an individual to drive a vehicle is not a fundamental right; "it is a revocable privilege that is granted upon compliance with statutory licensing provisions." State v. Skurdal, 767 P.2d 304, 307 (Mont. 1988) (collecting cases); see also Boutin v. Conway, 153 Vt. 558, 564 (1990); Mackey v. Montrym, 443 U.S. 1, 10 (1979) (state has "paramount interest" in preserving safety of public highways).

One of Haselton's assertions is that the State of Vermont, and the defendants in particular, have deprived him of his "right of interstate and intrastate

migration." (Paper 1 at 2). In the context of a conviction for driving with a suspended license, this argument is without merit. As stated by the Rhode Island Supreme Court:

> The plaintiff's argument that the right to operate a motor vehicle is fundamental because of its relation to the fundamental right of interstate travel is utterly frivolous. The plaintiff is not being prevented from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it. What is at issue here is not his right to travel interstate, but his right to operate a motor vehicle on the public highways, and we have no hesitation in holding that this is not a fundamental right.

Berberian v. Petit, 374 A.2d 791 (R.I. 1977).

Because Haselton's claims are mistakenly premised upon a non-existent fundamental right to drive a vehicle on public roads, Haselton has failed to show that his motions have any merit whatsoever. Accordingly, his requests for injunctive relief must be DENIED.

II. Request for Counsel

Haselton has also requested court-appointed counsel. (Paper 2). Haselton has not provided any evidence to the court that he is indigent, and the only reason stated for his request is that this case

allegedly involves a constitutional issue. Id. The Second Circuit has determined that a threshold consideration when reviewing a request for court-appointed counsel is whether the claim "is likely to be of substance." See Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997). As set forth above, the Court does not regard Haselton's claim against the defendants as likely to be meritorious. Accordingly, Haselton has failed to meet the threshold requirement, and his motion for court-appointed counsel is DENIED.

Conclusion

For the reasons set forth above, Haselton's motion for court-appointed counsel (Paper 2), motion for arrest of judgment (Paper 3), motion to "protect plaintiff's free exercise of movement" (Paper 4), and motion for immediate protection from state police powers (Paper 12) are each DENIED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this _____ day of November, 2003.

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J. Garvan Murtha
United States District Judge